

SPECIAL MEETING

March 7, 2012

The Special Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, Historic County Building, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, On Wednesday, March 7, 2012, at 8:43 a.m., after which the following members answered the call of the roll:

Honorable Dickie S. Chang
Honorable Nadine K. Nakamura (present at 8:45 a.m.)
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro, Council Chair

EXCUSED: Honorable Tim Bynum
Honorable KipuKai Kuali'i

APPROVAL OF AGENDA

CHAIR FURFARO: The purpose of this special meeting is to conduct an interview for a position on the Charter Review Commission, and I believe we are looking at a term that ends December 31, 2014 for Mr. James Nishida Jr.

JADE TANIGAWA: Council Chair, one note, on the approval of the agenda there is a correction that needs to be made.

Chair Furfaro: I see it right here.

Ms. Tanigawa: It should reflect December 31, 2013.

Chair Furfaro: Okay, so this is a partial term.

Ms. Tanigawa: Yes.

Chair Furfaro: Am I correct? Thank you. So this entitlement would allow Mr. Nishida to serve two of his own, two of his own terms should he be appointed. Could you give us some clarification, Paula? You need to come up to the mic.

PAULA MORIKAMI: I am with the Office of Boards and Commission. James Nishida previously served on the Planning Commission, and so

due to the work schedule that he had, he resigned from that, and we asked him if he would consider serving on the Charter Review Commission. So it is a continuous move from the Planning Commission to the Charter Review.

Chair Furfaro: But in reality serving on the Charter Review Commission this is only a partial term?

Ms. Morikami: Yes, because he can serve two three year terms, and that would take it to 2013.

Chair Furfaro: I see, he can serve two terms on any Commission, but not on individual Commissions.

Ms. Morikami: Right. There has to be a one year break in service to come back to another Commission.

Chair Furfaro: Thank you very much for that clarification.

Ms. Morikami: Thank you.

Upon motion duly made by Mr. Chang, seconded by Mr. Rapozo, and unanimously carried, the Agenda was approved as circulated.

INTERVIEW:

CHARTER REVIEW COMMISSION:

a. James E. Nishida Jr. – Term ending 12/31/13

JAMES NISHIDA: My name is James Nishida.

Chair Furfaro: James, could I ask you to give us a little background on yourself, although we do have your application?

Mr. Nishida: I worked mostly as a farmer, and I work various jobs over my lifetime. I worked a lot with KEO, and worked as a Property Manager for Lihu'e Court Town Homes, although now I am back with KEO. I worked for the State for a while doing field inspections. I did some volunteer work with the Farm Bureau and 1,000 Friends of Kaua'i. I also did some work with sort of our family farm, because of the tax code and all that, we kind of had to anticipate like the increasing development, and taxes, and stuff like that, so we started to develop some property, and we came before the Council.

Chair Furfaro: James, how many terms did you serve on the Kaua'i Planning Commission?

Mr. Nishida: I served a partial term, and then a full term, and when my new term started up the second full term, I just completed a portion of that term.

Chair Furfaro: Members, are there questions for Mr. Nishida? Vice Chair Yukimura.

Ms. Yukimura: Good morning, Jimmy. I was just looking at your application which has a question why are you interested in serving and what do you understand to be the primary duties of this appointment? Maybe you can just tell us why you are interested in serving.

Mr. Nishida: I have a long time interest in the General Plan and the CZO, and the Planning Commission allowed me to look real closely at how laws apply and how they get implemented and how government and the County of Kaua'i operates, and how integrally that applies to our lives and our future. Also, I always was fascinated with how the application of the laws that we have in the books affect the aspects of our lives. So when I didn't have time to do the Planning Commission, the idea came up to serve on the Charter Review Commission. So I looked a little bit at what the Charter was, because most citizens don't look at the Charter. Only certain people in the community look at the Charter quite a bit, and I've noticed from watching TV some people know a lot, and how it affects the operation of how Government was. So when I picked it up and I looked at it, you know, it was really interesting. It tells how the Departments work, the power of the different sections of government, so I looked at that as a challenge, and I wanted to participate and learn about that aspect.

Ms. Yukimura: So I share your fascination with government and governance and how things work. So the Charter is like the constitution for the County. It's a really important document. You feel you will have the time to put into it, to do the appropriate deliberations?

Mr. Nishida: Well, the problem with the Planning Commission was that it was during the day, because the job I had then and the job I have now really during the work hours you just don't have time during work hours.

Ms. Yukimura: I see.

Mr. Nishida: John told me that he thinks the Charter Review Commission meeting starts at four o'clock and was more reasonable.

Ms. Yukimura: In your application you say that your understanding of the primary duties of the appointment are to review and approve measures for placement on the ballot. What criteria are you planning to use to determine what should go on the ballot and what shouldn't, or have you had time to think about that?

Mr. Nishida: I think that you got to participate in the meetings and then in consultation with the County Attorney and you got to hear from the public, and the other members of the Commission. I think as far as the criteria, I really, when I reviewed it, it really talked about real basic interactions between different parts of Government. I would ... it looks to me like basically it is kind of intact as it is. Changes to it, I would kind of hesitate to make, because they are more like how the relationship between different parts of Government works and then along the way, you see certain ones kind of specific direction, which is a little odd to me, but in general it is a relationship between different parts of Government.

Ms. Yukimura: You are absolutely right that it is about the structure of Government and the relationship between the different parts and I can tell you have looked at it and thought about it, so I really appreciate that. I also share your thinking that we shouldn't make quick and major changes to it without understanding all the implications of the change because they are interlocked and you change one thing and you might affect something else without really knowing or understanding. So I have a couple more questions, but I think I will have others ask first.

Chair Furfaro: We will come back to you, Vice Chair.

Ms. Yukimura: Thank you.

Chair Furfaro: Mr. Rapozo.

MEL RAPOZO: Thank you. Thanks Jimmy for volunteering to serve again. I appreciate your service on the Planning Commission for all those years, including being a Chair as well right? I kind of want to follow-up to what Councilmember Yukimura mentioned about the Charter and the importance of it, and the significance of it, and I think we have seen in recent months some real challenge as to the interpretation of the Charter. Realizing this is a Mayoral appointment, I just want to make sure...well first of all, what is your perception of the Charter as it relates to the governance of this County? Do you hold it at the same regard as the State Constitution and the United States Constitution?

Mr. Nishida: Yes absolutely. I am not real sure...I wanted to look more into that, but at one point there was like a point where the State Government said enable the County of Kaua'i, the entity of the County of Kaua'i to be established, and I think the Charter is the one that actually set out how the various parts would operate. And then I kind of wanted to sit down kind of looking forward to seeing how that whole thing got established. Then how the different parts sort of worked, but yes, it is how we govern.

Mr. Rapozo: It is and again, like I said in recent months find that there has been attempts to really diminish the power and authority of the Charter and I want to make sure you feel comfortable in serving on that Board or that Commission, comfortable enough that you can voice that stand because I think we are really getting away from the Charter, and that is our hope... and I agree with Councilmember Yukimura as well, we shouldn't be running to the Charter every time we disagree with the way something is done. But also, we got to make sure that Charter is upheld, all of us every one of us that takes that oath, and if it is an interpretation issue, then that needs to be resolved in the proper venue. I just want to make sure that you are comfortable enough with the Charter and you understand that the Charter is our governing document. That is the law of the land. And that you are not going to sidestep that authority, and that you are going to really enforce the Charter as the intent really was.

Mr. Nishida: The way I think it goes to kind of answering Councilmember Yukimura's question, but when I enter into the door everybody has kind of their own idea about how Government should run and how that, I do not think that is right. Everybody has that, but the way I enter, because I had plenty different kinds of ideas in the Planning Commission, when I go into those doors what I represent is the rules and the laws and the General Plan, the State laws, and the various laws regarding the work of the Planning Commission, and I am going to approach the Charter Commission in the same way. When I walk into those doors, that Charter that we review and we interpret based on that.

Mr. Rapozo: One last question, Mr. Chair. This is a direct question and one that I want to know what your position was if the Charter says that the governing or the body or the entity that it is describing "shall" do something. What is your interpretation of "shall?" As in the Charter, because that is important for me; I am going to tell you right now, I will vote based on your response. I need to know what is your perception of the word "shall" when it shows up in the Charter?

Mr. Nishida: I watched that whole thing, not the whole thing but a lot of the responses back and forth, when that question was before the Council. So I think one of the things that is important in the Charter is when something is missing, you know when something is written in there and it is

written with different interpretation, that it is the Charter is almost sacrosanct like that. So if it says "shall" in there, it means "shall," but then the thing about Government is that...I do not know if the word like expediency that happens, so expediency I looked up the word and one of the definitions was quick, but expediency is also another definition for that is it is quick but it is effective, like it makes sense to do it a certain way. To me, I would not go in there and say "shall" should mean "may" or any of that. "Shall" is "shall" as far as the Charter is concerned. I would look at it as the Charter is the Charter. Now I would not try to change it because I think it should mean "may" or any of that because unless there is a discussion within that, that made that work. But I think that the reason that it says...all the words in the Charter is there is because at the time of the writing of that particular section that was the intention of the Charter, was those words.

Mr. Rapozo: Well, I guess I just want to understand your perception. Because granted you will get a County Attorney's opinion, but I am just wondering, are you comfortable enough with your interpretation of "shall" that even if the County Attorney said hey "shall" is not "shall," I am just curious what is your interpretation and I'm not talking about that issue we talked about that we just went through. In general, if I come here and it says the County Clerk shall have the proposed amendments published in the newspaper of general circulation in the County thirty days prior. I mean does anybody have the ability to say well that shall does not mean shall, because for me that is a huge concern. I think the public all understands what "shall" means and as we go through this Charter there is a whole lot of "shalls" and there is a whole lot of "mays." I just want to be comfortable that you are comfortable and that what you are saying today is that in the Charter, "shall" is mandatory. That is what I want to hear, because to be honest with you I am going to have a hard time voting for anyone that says well it all depends on what the Attorney tells me, because I do not want to go through that exercise again. I really do not want to go through that exercise again.

Mr. Nishida: Having not sat on the Charter Review Commission, looking at it from the outside, I would say "shall" means "shall."

Mr. Rapozo: Thank you. That is all I have, Mr. Chair.

Chair Furfaro: Thank you Mr. Rapozo. Members?
Councilwoman Nakamura.

NADINE NAKAMURA: Hey Jimmy, thank you for being here and willing to serve on this Charter Commission. I know it is a difficult time for you and your family right now, but so for you to step up and be willing to share your knowledge and your wisdom with this Committee is a good thing. I think it is good for the County to have your perspective, so I just want to thank you.

Chair Furfaro:
Chair Yukimura.

Mr. Chang, before I give the floor to Vice

DICKIE CHANG:

I will wait until later.

Chair Furfaro:

Okay, Vice Chair Yukimura.

Ms. Yukimura: Thank you Chair. The most prominent issue before us, which involves the interpretation of the Charter, is the issue of the powers between the Police Chief and the Mayor. I am not going to ask you to dissect or analyze it, but it is an example of the issues that arise from how we structure governance right, which is what the Charter is about. So one thing I think that has arisen out of all of this is that there is a disclarity, there is no clarity, it requires interpretation, because it is not explicitly said, day-to-day supervision includes the power to suspend versus it being a sub-power of the power to terminate. So actually, that raises the role of the Commission so there might be some amendments that can clarify what it is or what it should be so that is going to be the role of the ... that is the role, part of the role to clarify where there is ambiguity, and I guess if I put this into a question, it is, it takes a lot of work and thought and research and are you willing to do that?

Mr. Nishida: Yes, I am totally willing to do that. That ambiguity, I think I can see that the stress that it kind of creates and then especially I look forward to it in an intellectual kind of way. I understand the conflict, because it is with every Commission that has an appointing body. It's not just one, and then we have several, it's interesting. And I go back to my previous answer that I think what was written there in that it would take a lot for the Charter Review Commission to make the change, because there are other ways that change can happen, but my gut feeling is that within the Commission is very difficult to not very difficult, but it would take a lot of deliberation before I would be comfortable making a decision regarding something like changing the Charter.

Ms. Yukimura: Right. There is a difference between changing the Charter and clarifying the Charter, and there is another way to clarify the Charter than by Commission work or Charter change and that is by a Court decision that would interpret the existing wording in the Charter and that is another option, which we may or may not see on this particular issue. Well, I have always known you to be very thoughtful about these issues, and on the Charter Commission, that element of thoughtfulness and reserve or willingness not to just jump and make changes is really important because this is the governing document of the County, the Constitution. So you are playing the role of Constitutional Convention or those who drafted the main structure of government. It is very important; I mean it is very fundamental. I appreciate your willingness to take it on, thank you.

Chair Furfaro:

Other members before I speak?

Mr. Rapozo: I have one that is pretty much a follow-up and the County does have several Commission-Appointed Department Heads, Planning, Civil Service, Police, Fire, and Water is semi autonomous, anyway, but generally, I am not asking specifics, I just want to know, as a general belief for you, is it your belief that in fact the Commissions provide the oversight for those Department Heads versus the Mayor?

Mr. Nishida: I think the wording, I would have to go look at the exact wording, but I think that the problem is that the exact wording says that in Layman's terms "hire and fire." And it seems to me that the challenge for a Mayoral administration would be to balance and to create an effective team, given that another Commission hires and fires. Then I think it was kind of intentional that the Commission hire and fire. You know that kind of essential purpose to that but the challenge for the County of Kaua'i is that the individuals that are hired and fired by Commissions, also part of a leadership team and provide really essential roles to the County. So I think that is the challenge and I think that is the question so I look forward in a weird way look forward to hearing the different sides, because that is what is before the Charter Review Commission now, so I look forward in a weird way to hearing that because it is essential..

Mr. Rapozo: You are not really prepared right now to...you have not done the research?

Mr. Nishida: No, not at all. I know some of it.

Mr. Rapozo: It is okay. I would much rather you do the research. Thank you. That is all, Mr. Chair.

Chair Furfaro: Mr. Chang.

Mr. Chang: I don't have a question, I just want to make a comment at the end.

Chair Furfaro: Jimmy, I have known you for a long time and I want to thank you first of all for your previous service to very challenging Boards you have served on. To hear your commentary was very refreshing, and I think you can see from the questions amongst the Board that makes up the Council, we have some items that you might want to visit. For example, Vice-Chair Yukimura mentioned when we have this impasse there is always a possibility to look for declaratory judgment with the courts on items. That is an important feature, I think, of our County Charter. Also, this question about hiring and firing and

reviewing, certain Boards and Commissions have that power, Fire, Police, Planning, but obviously if you get into a management discussion with anybody who practices that, certainly part of the role of hiring, termination and doing someone's review implies that you have basically the influence to suspend, etc., for performance issues. So that is another item for you to certainly think about. And then, of course, when we get to the question about "shall" and "may," I might lead you to the Kaua'i County Code, Article 2, Section f, which clearly defines the "must" and "shall" and "may" terminology. It is worth getting that digested. The term "must" and the term "shall" are mandatory, it says in the County Code. So it certainly is worth visiting, because these are important, these three items are very important as you look forward to the possibility of serving on the Charter Review Commission. Jimmy, I want to say that we know of your participation in our community and you will have my support when we come to vote. Thank you very much for coming today.

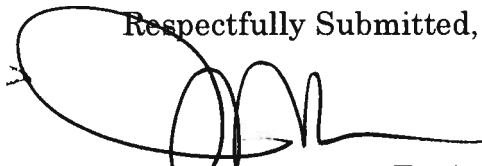
Mr. Nishida:

Thank you.

Chair Furfaro: On that note, I think we will end this Special Council Meeting, and members, we will be back in five minutes to start our Committee Meetings today.

There being no further business, the Special Council Meeting was adjourned at 9:12 a.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountian-Tanigawa', with a large, stylized loop at the beginning.

Jade K. Fountian-Tanigawa
Deputy County Clerk

/mn